IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SECOND APPEAL NO. 1223 OF 2004

Smt. Ranjana Anil Revankar & ors. ... Appellants

V/s

Shri Kimmatlal M. Dongrani ... Respondent

Shri Sandesh Patil for the appellants.

Ms. Deepti B. Mistry for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 1ST NOV., 2004.

P.C.:

1. Heard learned counsel for the appellants. Perused the record.

2. The appellants-defendants have filed this appeal against the judgment and order dated 11.9.2003 passed by the Addl. District Judge, Thane, dismissing the appeal and confirming the decree passed by the Jt. Civil Judge, Jr. Divn., Thane, in R.C. Suit No. 408 of 2001.

3. The respondent-plaintiff came with the case that he was the owner of the suit premises admeasuring 180

sq.mtr. which is abutting to Room No. 577, Bldg. No. 17,, Kopri Colony, Thane. At the end of the year 1982 on oral request of deceased defendant, the plaintiff had granted licence/permission to use and occupy the suit premises by handing over its possession initially for 11 months. The agreed monthly charge for the said use and occupation of the suit premises were Rs.225/- plus 50% of electricity and water charges. Thereafter, from time to time, on the request of the defendant the said licence was extended till the year 1994. Thereafter the defendant did not vacate the said premises and in December, 1995 the plaintiff had revoked the licence by notice and, therefore, the plaintiff came with the case that the deceased defendant was a rank trespasser and hence the suit came to be filed.

The original deceased filed the written statement and resisted the pleadings of the plaintiff. It is contended that he had purchased the property from the plaintiff and, therefore, he had become owner thereof. The defendant also tried to raise the issue regarding jurisdiction of the Court alongwith other contentions. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that none of the challenges raised by the defendant were valid and,

therefore, the suit was required to be decreed and order to that effect was passed.

The appeal was carried to the District Court. The Addl. District Judge heard the dispute on merits and came to the conclusion that the appeal deserves to be dismissed and the order was passed. Hence the present appeal.

4. At the outset, the learned counsel for the appellant sought to canvass that the substantial question of law was in respect of the jurisdiction of this Court. It was also submitted that the learned lower Appellate Court Judge did not address the issue at all and, therefore, this was sufficient to admit the appeal. However, perusal of the judgments of both the Courts below show the true position quite otherwise. The learned Trial Judge came to the conclusion that the Civil Court had jurisdiction to try and entertain the suit as its cognizance was not expressly or implicitly barred by the provisions of any special statute or law. Similar view was taken up by the lower Appellate Court who appears to have discussed the issue of jurisdiction thoroughly and extensively and, therefore, there is absolutely no reason to hold that the lower Appellate Court has not addressed that issue in the course of the

judgment.

The learned counsel for the appellant also sought to raise objection to the effect that the land on which the structure is standing of which Room No. 577 is the suit property, belongs to the Government and, therefore, the provisions of Bombay Government Premises (Eviction) Act, 1955 would be applicable for deciding the jurisdiction of the Civil Court. However, it is needless to mention that the premises is not the government property and the suit room is a part of the structure standing on Government land and, therefore, provision of the said Act are not applicable at all. Perusal of the judgments of both the Courts below is more than sufficient to show that both the Courts have appreciated the evidence in correct and proper manner and have addressed themselves to all the contentions raised on behalf of the appellant-defendant while recording the findings and decreeing the suit.

There is also no substantial question of law involved at all in this case. The ratio laid down by the Supreme Court in the case of **Kondiba Gadadu kadam v/s Savitribai Sopan Gujar & ors., reported in A.I.R. 1999 SC 2213** is clear enough to show that the conditions mentioned in

Sec.100 must be strictly fulfilled before a second appeal can be maintained and no Court has the power to add to or enlarge those grounds. The concurrent findings of facts howsoever erroneous cannot be disturbed by the High Court in exercise of the powers under this section. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last Court of fact, being the first appellate Court. In view of this well established legal position, I do not find it necessary to entertain the appeal and, as such, it deserves to be dismissed and stands dismissed in limine with no order as to costs.

Consequently, the civil application also stands dismissed with no order as to costs.

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